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2012 Aug 1

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8 Attorneys for Defendant  
City of San Jose  
9

10 **IN THE SUPERIOR COURT FOR THE**  
11 **COUNTY OF SANTA CLARA**

12 SAN JOSE POLICE OFFICERS'  
ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE AND BOARD OF  
ADMINISTRATORS FOR POLICE AND  
16 FIRE DEPARTMENT RETIREMENT PLAN  
OF CITY OF SAN JOSE,

17 Defendants.  
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Case No. 112CV225926

112CV226570  
112CV226574  
112CV225928  
112CV227864  
**DEFENDANT CITY OF SAN JOSE'S  
NOTICE OF MOTION AND MOTION TO  
CONSOLIDATE AND STAY**

**Hearing:**

Date: August 23, 2012

Time: 9:00 a.m.

Dept.: 2

Judge: Hon. Patricia Lucas

Complaint Filed: June 6, 2012

Trial Date: None Set

1           **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2           **PLEASE TAKE NOTICE THAT** on August 23, 2012 at 9:00 a.m. in Department 2  
3 before the Honorable Judge Patricia Lucas, or as soon thereafter as the matter may be heard, in  
4 Santa Clara County Superior Court at its Downtown Superior Court, 191 North First Street, San  
5 Jose, California, 95113, Defendant City of San Jose will move, and hereby does move, that the  
6 five state-court actions listed below be consolidated for all purposes under the case number of *San*  
7 *Jose Police Officers' Ass'n v. City of San Jose, et al.*, Santa Clara County Superior Court Case No.  
8 112CV225926. This motion is made pursuant to California Code of Civil Procedure section 1048  
9 and California Rule of Court, rule 3.350.

10                     *San Jose Police Officers' Ass'n v. City of San Jose, et al.*;  
11                     Santa Clara County Superior Court Case No. 112CV225926.

12                     *Robert Sapien, et al. v. City of San Jose, et al.*;  
13                     Santa Clara County Superior Court Case No. 112CV225928.

14                     *Teresa Harris, et al. v. City of San Jose, et al.*;  
15                     Santa Clara County Superior Court Case No. 112CV226570.

16                     *John Mukhar, et al. v. City of San Jose, et al.*; and  
17                     Santa Clara County Superior Court Case No. 112CV226574.

18                     *AFSCME Local 101 v. City of San Jose, et al.*;  
19                     Santa Clara County Superior Court Case No. 112CV227864.

20           Defendant the City of San Jose will move, and hereby does move, for the Court to exercise  
21 its inherent discretionary authority to stay the five state-court actions listed above so that the  
22 parties may litigate the City's Federal Action currently pending in the San Jose Division of U.S.  
23 District Court, Northern District of California, entitled: *City of San Jose v. San Jose Police*  
24 *Officers' Ass'n, et al.*, Northern District Case No. 5:12-cv-02904-LHK.

25           Pursuant to California Rules of Court, rule 3.350, each of the five actions listed above  
26 involves the following parties and counsel listed below:  
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1 ***San Jose Police Officers' Ass'n v. v. City of San Jose, et al.;***  
2 Santa Clara County Superior Court Case No. 112CV225926.

3 **Parties**

4 **Plaintiff**  
5 San Jose Police Officers  
6 Association

7 **Counsel**

8 Gregg M. Adam  
9 Jonathan Yank  
10 Gonzalo Martinez  
11 Jennifer Stoughton  
12 **CARROLL, BURDICK &**  
13 **MCDONOUGH**  
14 44 Montgomery Street, Suite 400  
15 San Francisco, CA 94104

16 **Defendant**  
17 City of San Jose

18 Arthur A. Hartinger  
19 MEYERS, NAVE, RIBACK, SILVER &  
20 WILSON  
21 555 12<sup>th</sup> Street, Suite 1500  
22 Oakland, California 94607

23 **Defendant**  
24 Board of Administrators for Police  
25 and Fire Department Retirement Plan  
26 of City of San Jose<sup>1</sup>

27 Harvey L. Leiderman  
28 Reed Smith, LLP  
101 Second Street  
Suite 1800  
San Francisco, CA 94105

1 ***Robert Sapien, et al. v. City of San Jose, et al.;***  
2 Santa Clara County Superior Court Case No. 112CV225928.

3 **Parties**

4 **Plaintiffs/Petitioners**

5 Robert Sapien  
6 Mary McCarthy  
7 Thanh Ho  
8 Randy Sekany  
9 Ken Heredia

10 **Counsel**

11 John McBride  
12 Christopher E. Platten  
13 Mark S. Renner  
14 **WYLIE, MCBRIDE, PLATTEN & RENNER**  
15 2125 Canoas Garden Avenue, Suite 120  
16 San Jose, CA 95125

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24 <sup>1</sup> The City contends that its retirement boards, named through the state-court actions as either a  
25 defendant or a necessary parties in interest, are constituent boards of the City of San Jose. As of  
26 today, the City does not believe that the retirement boards have separately filed an answer or  
27 otherwise appeared in any of the state-court actions with the exception of *POA v. City San Jose, et*  
28 *al.*, Case No. 112CV225926. Mr. Liederman attended on behalf of the Board of Administration  
for Police and Fire Department Retirement Plan at Plaintiff POA's initial ex parte TRO hearing.

1 **Defendants/Respondents**

2 City of San Jose  
3 San Jose City Manager Debra Figone<sup>2</sup>

Arthur A. Hartinger  
MEYERS, NAVE, RIBACK, SILVER &  
WILSON  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, California 94607

5 **Necessary Party in Interest**

6 Board of Administrators for Police  
7 and Fire Department Retirement Plan  
8 of City of San Jose

Harvey L. Leiderman  
REED SMITH LLP  
101 Second Street  
Suite 1800  
San Francisco, CA 94105

9  
10 *Teresa Harris, et al. v. City of San Jose, et al.;*  
Santa Clara County Superior Court Case No. 112CV226570.

11 **Parties**

**Counsel**

12 **Plaintiffs/Petitioners**

13 Teresa Harris  
14 Jon Reger  
Moses Serrano

John McBride  
Christopher E. Platten  
Mark S. Renner  
WYLIE, MCBRIDE, PLATTEN & RENNER  
2125 Canoas Garden Avenue, Suite 120  
San Jose, CA 95125

15 **Defendants/Respondents**

16 City of San Jose  
17 San Jose City Manager  
Debra Figone

Arthur A. Hartinger  
MEYERS, NAVE, RIBACK, SILVER &  
WILSON  
555 12<sup>th</sup> Street, Suite 1500  
Oakland, California 94607

19 **Necessary Party in Interest**

20 Board of Administrators for Police  
21 and Fire Department Retirement Plan  
of City of San Jose

Harvey L. Leiderman  
REED SMITH LLP  
101 Second Street  
Suite 1800  
San Francisco, CA 94105

24 <sup>2</sup> City Manager Figone is not a defendant in *San Jose POA v. City of San Jose, et al.*, Case No.  
25 112CV225926, the action in which defendant City of San Jose brings this motion to consolidate  
26 and stay. The same counsel represent both the City and the City Manager in the five state-court  
27 actions identified herein. City Manager Figone joins the City's motion with respect to every case  
28 in which she is a party.

1 *John Mukhar, et al. v. City of San Jose, et al.;*  
2 Santa Clara County Superior Court Case No. 112CV226574.

3 **Parties**

**Counsel**

4 **Plaintiffs/Petitioners**

5 John Mukhar  
6 Dale Dapp  
7 James Atkins  
8 William Buffington  
9 Kirk Pennington

John McBride  
Christoph  
Mark S. Renner  
WYLIE, MCBRIDE, PLATTEN & RENNER  
2125 Canoas Garden Avenue, Suite 120  
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7 **Defendants/Respondents**

8 City of San Jose  
9 San Jose City Manager  
10 Debra Figone

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WILSON  
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11 **Necessary Party in Interest**

12 Board of Administrators for Police  
13 and Fire Department Retirement Plan  
14 of City of San Jose

Harvey L. Leiderman  
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101 Second Street  
Suite 1800  
San Francisco, CA 94105

15 *AFSCME Local 101 v. City of San Jose, et al.;*  
16 Santa Clara County Superior Court Case No. 112CV227864.

17 **Parties**

**Counsel**

18 **Plaintiff/Petitioner**

19 American Federation of State, County  
20 and Municipal Employees Local 101

Teague P. Paterson  
Vishtasp M. Soroushian  
BEESON, TAYER AND BODINE, APC.  
Ross House, 2nd Floor  
483 Ninth Street  
Oakland, CA 94607

21 **Defendants/Respondents**

22 City of San Jose  
23 San Jose City Manager  
24 Debra Figone

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25 **Necessary Party in Interest**

26 Board of Administrators for Police  
27 and Fire Department Retirement Plan  
28 of City of San Jose

Harvey L. Leiderman  
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101 Second Street  
Suite 1800  
San Francisco, CA 94105

1 Pursuant to California Rules of Court, rule 3.350(a)(2), the City's supporting  
2 memorandum, declaration, and proposed order will be filed only in Dept. 2 in case *San Jose*  
3 *Police Officers' Ass'n v. City of San Jose, et al.*, Santa Clara County Superior Court Case No.  
4 112CV225926. All documents will be served on all parties.

5  
6 DATED: August 1, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

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8  
9 By: 

10 Arthur A. Hartinger  
11 Linda M. Ross  
12 Jennifer L. Nock  
13 Michael C. Hughes  
14 Attorneys for Defendant  
15 City of San Jose

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